Supreme Court, U.S.
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No. 92-1595

In The

Supreme Court of the United States

October Term, 1992

GEORGE LENWOOD BRITTON,

Petitioner,

vs.

KATRINA PERNNELL MURRAY by NEVADA STATE WELFARE DIVISION, Guardian Ad Litem, and SHIRLEY ANN MEEKS,

Respondents.

On Petition For Writ Of Certiorari To The Nevada Supreme Court

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

It has been conceded at every stage of the proceedings in this matter that the notice provisions of NRS 31A.040 cited in the Petition for Writ of Certiorari, filed herein, were not followed. This concession was made before the Hearing Master who heard the evidence in this case, before the District Court Judge that reviewed the Master's Findings, and before the Supreme Court of the State of Nevada who reviewed the action of the District Court.

We, again, concede that the procedures required by our wage withholding laws, NRS 31A.040 were initially ignored.

In April of 1986, when the original Paternity Judgment was entered in this case, it was local practice for courts to order what was referred to as "Stayed Wage Withholding". This was done in this instance. Stayed wage withholding avoids routine requests by the District Attorney's Office for immediate withholding in all cases to enforce support orders, and gives Defendants an opportunity to pay on their own, thereby saving court time in litigating requests. A stayed wage withholding order meant that so long as payments of support were made as ordered (i.e. through the County Clerk's Office), the District Attorney's Office would not send the wage withholding to the Defendant's employer. The practice was to simply rely upon the payment records as reported through the County Clerk's Office. Since the Family Support Act of 1988, P.L. 100-485 Sec. 101 now requires "immediate" income withholding in all cases when an

Order of Support has been made, the practice as conceded above has been abandoned.

The Defendant was given hearings on his theory that no support was due as he claimed it has been waived. Our courts have determined that there was no waiver and that the Defendant's failure to pay support was not proper. Even though this occurred after the fact, our courts felt that a second hearing to determine whether thirty (30) days of support had not been paid would be futile and duplicative, and, therefore, have not found it necessary to stay the withholding as requested by the Defendant.

CONCLUSION

Wherefore Respondent respectfully prays that the Petition for Writ of Certiorari be denied.

DATED this 14 day of April, 1993.

Respectfully submitted,

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District Attorney
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ROBERTA J. O'NEALE
Chief Deputy District
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Counsel for Respondent